IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32(2)(b)

Description of the case

W.P. No. 331 of 2002 (S/S)
(Old No. 4513 of 1999)

Hari Dutt Joshi …Petitioner

Versus

Managing Director
U.P. Co-operative Sugar Factories Federation Ltd.
Lucknow & others … Respondents

Approved for reporting

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Not approved for reporting

Date of Decision 16th June, 2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 331 of 2002 (S/S)
(Old No. 4513 of 1999)

Hari Dutt Joshi aged about 40 years
S/o Sri Rudra Mani Joshi
R/o Village Vaman Puri
Post Sitarganj
District Udham Singh Nagar

…Petitioner

Versus

1. Managing Director
   U.P. Co-operative Sugar Factories Federation Ltd.
   9-A Rana Pratap Marg
   Lucknow
2. General Manager
   The Kishan Sahkari Chini Mills Ltd.
   Sitarganj
   District Udham Singh Nagar
3. District Magistrate/ Administrator
   District Udham Singh Nagar.

…Respondents

Sri P.C. Bisht learned counsel for the petitioner
Sri M.C. Pande, learned counsel for the respondents No. 1 and 2.
Sri N.P. Shah, leanred counsel for the respondent No. 3.

Hon'ble B.C. Kandpal, J.

By way of this writ petition, the petitioner has sought a direction in the nature of certiorari quashing the impugned order of dismissal dated 31.01.1998 (annexure No. 1 to the petition).

Brief facts giving rise to this petition are that the petitioner was working as a workman in "Kishan Sahkari Chini Mills Ltd." Sitarganj District Udham Singh Nagar. He was placed under suspension by the order of the General Manager on 05.09.1997 for charges of misconduct and to instigate illegal strike.

As per the petition, the chargesheet was served and two charges were leveled against him. The petitioner denied all the charges leveled against him.

It is further averred in the writ petition that subsequently the strike was called off and suspended employees were reinstated. But in case of the petitioner one Cane Officer was appointed Inquiry Officer, who conducted the inquiry and submitted his report on 24.01.1998. After the submission of the inquiry report the General Manager dismissed the services of the petitioner hence this writ petition.

The counter affidavit has been filed by the respondent, it has been stated in the counter affidavit that the petitioner has filed a conciliation case before the Conciliation Officer and the matter is subjudice. It is also pleaded that the writ petition is not maintainable.

The petitioner has filed the rejoinder affidavit and he has averred therein that the petitioner had withdrawn the conciliation proceedings on the assurance given by the District Magistrate who had ordered the re-inquiry in the matter.

Heard learned counsel for the petitioner as well as learned counsel for the respondents and perused the record.

Learned counsel for the respondents has first of all argued that in view of the ***Ajay Hasia's case reported in (1981) 1 SCC page 722,*** the writ petition is not maintainable as the respondent's mill was neither an instrumentality nor an agency of the Government hence was not an "other authority' under Article 12.

Learned counsel for the petitioner, on the other hand has also cited ***(2004) 1 SCC 605 Radha Raman Samanta Vs. Bank of India & others*** and has submitted that this writ petition is maintainable in view of the aforesaid decision.

I have gone through the decision and I am of the view that the decision is not helping the petitioner in any manner.

The Hon'ble Apex Court in the decision cited by the learned counsel for the petitioner has ruled that the power under Article 226 could be exercised for the enforcement of the fundamental rights and also for any other purpose. It was, therefore, open to the single judge to issue an

appropriate direction to the respondent bank, if otherwise justifiable of facts.

Learned counsel for the petitioner has also cited another decision reported in ***2004 (1) UD 477 Supreme Court Case Hukum Chandra Vs. Vivek Singh & another.***

I have read this decision also carefully and I am of the view that this decision is also not on the point in issue, therefore, it is also not going to support the submission of the learned counsel for the petitioner.

The Hon'ble Supreme Court in a decision cited in ***(2003) 8 Supreme Court Cases 639 General Manager Vs. Satrughan Nishad & others*** has clearly held that:-

> *"For coming within the purview of Article 12 the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests laid down in Ajay Hasia, (1981) 1 SCC 722 would have to be applied to and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, bye-laws of the Mill would have to be seen."*

In the instant case, the petitioner who was a workman in Kishan Sahkari Chini Mills Ltd." Sitarganj Udham Singh Nagar has challenged his termination of service, therefore, now the short question which crops up in the case is whether the mill which is a cooperative society is either State or an instrumentality or an agency of the State within the meaning of Article 12 of the Constitution of India.

In order to come to a definite conclusion for resolving this point again I will have to revert back to the decision of the Hon'ble Apex Court, ***General Manager Vs. Satrughan Nishad & others (Supra)*** wherein the Hon'ble Apex Court has observed as follows:-

"6. The point raised is no longer res integra as the same is concluded by decisions of this Court. In the case of Ajay Hasia Vs. Khalid Mujib Sehravardi, a Constitution Bench of this Court, while approving the tests laid down in the case of Ramana Dayaran Shettey Vs. International Airport Authority of India as to when a corporation can be said to be an instrumentality or agency of the Government observed at pp. 736-37 which runes thus: (SCC para 9)

9.The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be place on the expression 'other authorities', it must be realized that is should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summaries the relevant tests gathered from the decision in the International Authority case as follows.

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor… whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive state control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation as an instrumentality or agency of Government.

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

On the basis of the aforesaid observations made by the Hon'ble Supreme Court and after having perused the entire document available on the record, I come to the conclusion that the respondents mill which is a corporate society is neither State no an instrumentality or an agency of the State within the meaning of Article 12 of the Constitution of India.

In the result, I come to the conclusion that this writ petition is liable to be dismissed being not maintainable.

Accordingly, the writ petition is dismissed. However, the petitioner may raise the industrial dispute for adjudication by the court constituted under the provision of Industrial Disputes Act, 1947 and the court constituted under the aforesaid provision shall decide the dispute within a period of three months.

(B.C. Kandpal, J.)

16.06.2005
ASWAL